

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A) Supreme Court

JUDGE, NO. 02-487) Case No. SC03-1171

_____)

**RESPONSE TO RESPONDENT'S
FIRST REQUESTS FOR ADMISSION TO THE COMMISSION**

The Florida Judicial Qualifications Commission ("Commission"), pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby responds to the Respondent's First Requests for Admission as follows:

General Objection

The Commission objects to the request that the responses be answered under oath in that Florida Rule of Civil Procedure 1.370 does not require a response to requests for admissions be under oath.

Responses

1. The Commission admits that it has no witness who can testify based on personal knowledge that Exhibit "A" to the Notice of Formal Charges is an authentic copy of the actual paper that respondent submitted to the Air War College in January 1998, but states that circumstantial evidence will establish by clear and convincing evidence that Exhibit "A" to the Notice of Formal Charges is a copy of the paper submitted by the respondent to the Air War College.

2. See Answer to Request No. 1 above.

3. Admitted.

4. The Commission admits that it has no knowledge of any statement, oral or written, by a competent witness that based upon direct knowledge identifies Exhibit "A" to the Notice of Formal Charges as an authentic copy of the actual paper that respondent submitted to the Air War College in January 1998, but states that circumstantial evidence will establish by clear and convincing evidence that

Exhibit "A" to the Notice of Formal Charges is a copy of the paper submitted by the respondent to the Air War College.

5. Admitted.

6. Admitted.

7. The Commission admits that Mr. Vento has sworn under oath to the statements set forth in Request No. 7, but states that Mr. Vento's belief does not constitute legal evidence.

8. Admitted.

9. Denied.

10. The Commission admits that Lieutenant Colonel Russick has sworn under oath that he "can unequivocally state that [he] had never before read the alleged Holder AWC paper. The paper alleged to be Col. Holder's is not the same one that [he] read in 1998."

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. The Commission admits that it has no witness who can testify based on personal knowledge that Exhibit "A" to the Notice of Formal Charges could not have been fabricated through the use of existing computer and/or other technology or techniques, but states that circumstantial evidence will establish by clear and convincing evidence that Exhibit "A" was not fabricated, but is an authentic copy of the actual paper that the respondent submitted to the Air War College in January 1998.

17. See Answer to Request No. 16.

18. The Commission admits that it has no witness who can testify based on personal knowledge that Exhibit "A" to the Notice of Formal Charges could not have been written by someone other than the respondent, but states that circumstantial evidence will establish by clear and convincing evidence that Exhibit "A" is an authentic copy of the actual paper that the respondent submitted to the Air War College in January 1998.

19. See Answer to Request No. 18.

20. The Commission can neither admit nor deny that the Hoard paper has an Air War College date stamp on its cover page until it has taken the deposition of Lieutenant Colonel Charles A. Howard.

21. The Commission can neither admit nor deny that Exhibit "A" to the Notice of Formal Charges does not have an Air War College date stamp on its cover page because what appears to be a date stamp on the cover page of Exhibit "A" is so faint that it cannot be determined with certainty whether it is or is not a date stamp.

22. The Commission admits that it has no witness who can testify based on personal knowledge that Exhibit "A" to the Notice of Formal Charges was actually received by the Air War College, but states that circumstantial evidence will establish by clear and convincing evidence that Exhibit "A" is Colonel Holder's paper, which was submitted to the Air War College.

23. See Answer to Request No. 21.

24. The Commission admits that it has no witness who can testify based on personal knowledge that the paper submitted by respondent to the Air War College in January 1998 did not bear a date stamp affixed by the Air War College when it was returned to respondent by the Air War College, but, for the reasons set forth in response to Request No. 21, the Commission cannot at this time admit or deny that Exhibit "A" to the Notice of Formal Charges does not have an Air War College date stamp on its cover page.

25. See Answer to Request No. 24.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. The Commission admits that Lieutenant Colonel Howe has stated that it was his standard procedure to write a personal comment to each student on the last page of each Air War College paper that he graded.

31. The Commission admits that the last page of Exhibit "A" to the Notice of Formal Charges does not contain any personal comments written by Lieutenant Colonel Howe, but states that personal comments by Lieutenant Colonel Howe are found throughout Exhibit "A."

32. The Commission admits that Lieutenant Colonel Howe has stated that his standard procedure was to write a brief notation of the student's final grade on the last page of the Air War College papers that he graded.

33. Admitted.

34. Denied.

35. Denied.

36. Admitted.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Denied.

43. Denied.

44. The Commission objects to Request No. 44 on the ground that the term "a change of custody" as used in the context of this case is ambiguous.

45. See objection to Request No. 44.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Denied.

51. Denied.

INVESTIGATIVE PANEL OF THE FLORIDA
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Certificate of Service

I DO HEREBY CERTIFY that a copy of the foregoing has been furnished to each of the following by United States Mail this _____ day of October, 2003.

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